

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Moran	Team: Squad #06	CCRB Case #: 201911039	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 12/28/2019 12:32 PM	Location of Incident: West 73rd Street and Broadway	18 Mo. SOL 2/12/2022	Precinct: 20		
Date/Time CV Reported Sat, 12/28/2019 2:33 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 12/28/2019 2:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Erik Leonardo	27779	938846	020 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joffrey Cordero	01480	964458	020 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo spoke discourteously to § 87(2)(b)	
B.POM Erik Leonardo	Abuse: Police Officer Erik Leonardo threatened § 87(2)(b) with the use of force.	
C.POM Erik Leonardo	Off. Language: Police Officer Erik Leonardo made offensive remarks to § 87(2)(b)	
D.POM Erik Leonardo	Off. Language: Police Officer Erik Leonardo made offensive remarks to an individual.	
E.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo spoke discourteously to an individual.	
F.POM Erik Leonardo	Force: Police Officer Erik Leonardo hit § 87(2)(b) against a vehicle.	
G.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo acted discourteously toward § 87(2)(b)	
H.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo acted discourteously toward an individual.	
I.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo spoke discourteously to § 87(2)(b)	
J.POM Erik Leonardo	Discourtesy: Police Officer Erik Leonardo spoke discourteously to an individual.	
K.POM Erik Leonardo	Abuse: Police Officer Erik Leonardo threatened to arrest § 87(2)(b)	

Case Summary

On December 28, 2019, § 87(2)(b) filed the following complaint on behalf of § 87(2)(b) and § 87(2)(b) with the CCRB via the Call Processing System.

On December 28, 2019, at approximately 12:32 p.m. undomiciled individuals, § 87(2)(b) and § 87(2)(b) were in front of 2101 Broadway in Manhattan. PO Erik Leonardo and PO Joffrey Cordero of the 20th Precinct were directed to go to West 73rd Street and Broadway because of ongoing issues with § 87(2)(b) and his associates, calls about homeless encampments, and individuals yelling. § 87(2)(b) also stood near § 87(2)(b) and § 87(2)(b). PO Leonardo told § 87(2)(b) “I don’t give a fuck” and “What the fuck are you going to do?” (**Allegation A: Discourtesy** – § 87(2)(g)). Following a verbal interaction, PO Leonardo told § 87(2)(b) that if he continued to curse and make a scene, he would lock his “ass up for disorderly conduct” (**within Allegation A**). PO Leonardo told § 87(2)(b) that he could say “asshole,” but could not make a scene like the way he was saying “fuck you” and threatening to shoot him (**within Allegation A**). PO Leonardo stood in front of § 87(2)(b) and said, “These fucking guys” to himself (**within Allegation A**). PO Leonardo told § 87(2)(b) “I’m going to beat your fucking ass. You’re talking shit” (**within Allegation A and Allegation B: Abuse of Authority** – § 87(2)(g)). PO Leonardo called § 87(2)(b) and § 87(2)(b) a “fucking bum” and a “dirty bum,” (**within Allegation A, Allegation C and D: Offensive Language** – § 87(2)(g) and **Allegation E: Discourtesy** – § 87(2)(g)).

PO Leonardo then allegedly slammed § 87(2)(b) against the side of a police vehicle (**Allegation F: Force** – § 87(2)(g)) and said, “Turn around you fucking dirty bag of shit. You talk shit motherfucker,” and called him a “fucking asshole” (**within Allegation A**). § 87(2)(b) walked away while PO Leonardo handcuffed § 87(2)(b). PO Leonardo then asked some civilians where § 87(2)(b) was and then said, “Now he left. He’s not talking shit anymore” (**within Allegation A**). PO Leonardo later told § 87(2)(b) that § 87(2)(b) ran off once he saw that he [PO Leonardo] was not “fucking around” (**within Allegation A**). PO Leonardo looked down the sidewalk and shouted in the direction of where § 87(2)(b) walked away, “You want to come too?” Then PO Leonard kicked § 87(2)(b) and § 87(2)(b) cardboard signs and cup of money in the direction of § 87(2)(b) and individuals (**Allegations G and H: Abuse of Authority** – § 87(2)(g)). The objects went over § 87(2)(b) head. PO Leonardo spoke to § 87(2)(b) and individuals in the area and said, “This shit,” as he tossed another sign in their direction (**Allegation I and J: Discourtesy** – § 87(2)(g)). § 87(2)(b) told PO Leonardo that he was not born in this country. PO Leonardo replied that he was and called § 87(2)(b) an “asshole” and a “dickhead” (**within Allegation A**). PO Leonardo replied, “Every time I’m out here, I’m going to arrest your ass, so you can always be in jail” (**Allegation K: Abuse of Authority** – § 87(2)(g)). § 87(2)(b) was issued a summons for disorderly conduct subsection one (BR 01).

Fourteen BWC videos were obtained in regards to this incident (BR 02-15).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Leonardo spoke discourteously towards § 87(2)(b)

Allegation (C) Offensive Language: Police Officer Erik Leonardo made offensive remarks to § 87(2)(b)

Allegation (D) Offensive Language: Police Officer Erik Leonardo made offensive remarks to an individual.

Allegation (E) Discourtesy: Police Officer Erik Leonardo spoke discourteously to an individual.

Allegation (G) Discourtesy: Police Officer Erik Leonardo acted discourteously toward § 87(2)(b)

Allegation (H) Discourtesy: Police Officer Erik Leonardo acted discourteously toward an individual.

Allegation (I) Discourtesy: Police Officer Erik Leonardo spoke discourteously to § 87(2)(b)

Allegation (J) Discourtesy: Police Officer Erik Leonardo spoke discourteously to an individual.

It is undisputed that PO Leonardo's interaction with § 87(2)(b) he made a number of discourteous statements and actions. It is also undisputed PO Leonardo called § 87(2)(b) and § 87(2)(b) a bum and called § 87(2)(b) a dickhead.

Beginning at 1:17 minutes of PO Leonardo's second BWC, PO Leonardo told § 87(2)(b) "I don't give a fuck" twice and "What the fuck are you going to do?" PO Leonardo told § 87(2)(b) that he would lock "his ass up for disorderly conduct" at the 1:42 mark. He then informed § 87(2)(b) that he could not say, "asshole," or make a scene by saying "fuck you." At 2:05 minutes, PO Leonardo told § 87(2)(b) that if he cursed again, he would "lock his ass up." § 87(2)(b) repeatedly said "fuck" and asked to be arrested. PO Leonardo then said "these fucking guys" at the 2:25 minute mark. At 3:09 minutes, PO Leonardo said, "I'm going to beat your fucking ass," "you're talking shit, you're talking all this shit. You're talking a lot of shit, fucking bum" and "you're a dirty bum" (BR 05).

Beginning at 1:00 minute of PO Leonardo's third BWC video, PO Leonardo told § 87(2)(b) "Turn around you fucking dirty bag of shit. You talk shit motherfucker" and "you fucking asshole." At the 1:28 mark, PO Leonardo told § 87(2)(b) that he got him "all on video talking shit" and "you fucking." PO Leonardo told § 87(2)(b) "you can't act disorderly, you were saying 'fuck you' and 'cuff me' in front of people." At 2:27 minutes, PO Leonardo asked § 87(2)(b) where § 87(2)(b) went. After PO Leonardo could not find § 87(2)(b) he said, "Now he left, he's not talking shit anymore." At the 2:55 mark, PO Leonardo returned and kicked cardboard signs in the direction of § 87(2)(b) and individuals and said, "fuck you guys." He continued to toss another cardboard sign in the direction of the civilians and said, "this shit." At 4:20 minutes, § 87(2)(b) told PO Leonardo he was not born in this country, to which PO Leonardo called § 87(2)(b) an "asshole" and a "dickhead." PO Leonardo told § 87(2)(b) he would arrest his "ass" so he could always be in jail at 5:00 minutes. PO Leonardo continued and stated at 5:48 minutes, "you're talking all this shit like you can beat me." PO Leonardo told § 87(2)(b) that his friend ran off after he saw he was not "fucking around" and his friend talked a lot of "shit" (BR 07).

§ 87(2)(b) testified she went to West 73rd Street and Broadway to look for her acquaintances, § 87(2)(b) and § 87(2)(b). When she found them, she saw that there was a patrol vehicle in the vicinity. § 87(2)(b) and § 87(2)(b) taunted PO Leonardo and PO Cordero when they approached them, who yelled back. § 87(2)(b) could not hear or remember what the officers, § 87(2)(b) or § 87(2)(b) said. PO Leonardo called § 87(2)(b) and § 87(2)(b) a bunch of "dirty bums" as he looked at her. § 87(2)(b) believed the statement was not directed towards her but at § 87(2)(b) and § 87(2)(b) (BR 17-18).

§ 87(2)(b) and § 87(2)(b) were both unavailable to the investigation.

PO Leonardo testified that he used profanity because he was in the heat of the moment, repeated what § 87(2)(b) said back to him, and the two were trading insults. (BR 16). He used “bum” as a synonym for homeless person and did not mean it in a derogatory way. PO Leonardo added that after he could not find § 87(2)(b) he kicked a cardboard sign out of frustration. The sign blocked the walkway of the sidewalk. When PO Leonardo kicked the first sign, he accidentally kicked some change. The sign landed a few feet away from where PO Leonardo stood. PO Leonardo then threw another cardboard sign to the side. Neither of the cardboard signs made any contact with anyone.

PO Cordero was not interviewed as the entirety of the incident was captured on BWC.

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (BR 19). The NYPD is committed to accomplishing its mission by treating every citizen with compassion, courtesy, professionalism and respect. Officers pledge to value human life, respect the dignity of each individual and render our services with courtesy and civility, Patrol Guide Section 200-02 (BR 20). Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability, Patrol Guide Section 203-10 (BR 21). Administrative Code §14-151 defines “bias-based policing” as an act of a member of the force of the police department or other law enforcement officer that relies on actual or perceived... housing status as the determinative factor in initiating law enforcement action against an individual. It goes on to define housing status as the character of an individual’s residence or lack thereof (BR 31).

PO Leonardo admitted to using both profane language when he spoke with civilians and calling § 87(2)(b) and § 87(2)(b) a “bum.” PO Leonardo’s statements were captured on BWC. Administrative Code §14-151 includes housing status as a protected class and as PO Leonardo testified that he called § 87(2)(b) and § 87(2)(b) a “bum” because they were homeless, the use of the word “bum” is considered offensive. PO Leonardo confirmed, and it was observed on the BWC, that he kicked the cardboard signs out of frustration. § 87(2)(g) § 87(2)(b)

PO Leonardo engaged § 87(2)(b) in the same manner and used profanity and offensive language. He was not engaged in a chaotic or stressful situation and admitted that he erred in his use of language as per Patrol Guide Procedure.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Leonardo threatened § 87(2)(b) with the use of force.

It is undisputed that PO Leonardo told § 87(2)(b) that he would beat him up. Though there was no civilian testimony in regards to this allegation, it was captured on BWC.

At 2:40 minutes of PO Leonardo’s second BWC video, § 87(2)(b) told PO Leonardo that he was waiting to get him in handcuffs so that he [PO Leonardo] could punch him. PO Leonardo told § 87(2)(b) that that was not true. § 87(2)(b) then said to come back without his badge and gun, and he will show him what kind of man he was. PO Leonardo then repeatedly told § 87(2)(b) to “take

a swing” and “do it.” At 3:09 minutes of PO Leonardo’s BWC, he told § 87(2)(b) “I’m going to beat your fucking ass.” PO Leonardo repeatedly told § 87(2)(b) to “take a swing” for 30 seconds.

§ 87(2)(b) did not provide any statement in regards to PO Leonardo’s threat of force.

Additionally, as noted, § 87(2)(b) and § 87(2)(b) did not provide a statement.

PO Leonardo testified that when he told § 87(2)(b) to “do it” he meant punch me [PO Leonardo] in the face. PO Leonardo stated that while he made this comment, he was not trying to get § 87(2)(b) to fight him. PO Leonardo told § 87(2)(b) “I’m going to beat your fucking ass, and then I’m going to arrest you” to inform § 87(2)(b) that if he took a swing at him, then he would defend himself. PO Leonardo confirmed he made several remarks such as, “take a swing, take a swing, you’re talking shit, let’s go. Let’s do it right now. Let’s throw right now. You’re talking all this shit. You’re talking a lot of shit.” PO Leonardo explained that these comments were made in the heat of the moment. By, “let’s throw right now” PO Leonardo meant, “let’s fight.” PO Leonardo was not going to initiate a fight, but he would use force in defense. PO Leonardo testified that § 87(2)(b) was not serious when he told him [PO Leonardo] that he should come back without his badge. § 87(2)(b) never made any physical indication that he would use force or take any physical actions against the officers. Additionally, PO Leonardo did not take § 87(2)(b) remarks as a serious threat of force.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: he engages in fighting or in violent, tumultuous or threatening behavior New York State Penal Law §240.20 (1) (BR 23). Force may be used when it is reasonable to ensure the safety of a member of service or third person, or otherwise protect life, or when it reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force Patrol Guide 221-01 (BR 24).

At the time PO Leonardo threatened § 87(2)(b) with force, § 87(2)(b) was acting disorderly, but was not physically engaged with anyone, the officers were not outnumbered, and there was no hostile crowd. PO Leonardo testified that he told § 87(2)(b) to “take a swing” and that he was “going to beat your fucking ass” to inform § 87(2)(b) that if he did become physical then he was going to defend himself against § 87(2)(b). However, PO Leonardo testified that he never felt threatened by § 87(2)(b) and § 87(2)(b) made no indication that he would take any physical actions to threaten the safety of officers. PO Leonardo continuously made threatening remarks for over a minute and failed to take any steps to deescalate the situation.

As PO Leonardo admitted that he made the statements in the heat of the moment and to tell § 87(2)(b) that he would defend himself if § 87(2)(b) became physical. However, PO Leonardo testified that he did not perceive § 87(2)(b) remarks as an actual threat of physical force and § 87(2)(b) made no physical indication to threaten officers’ safety. § 87(2)(g)

Allegation (F) Force: Police Officer Erik Leonardo hit § 87(2)(b) against a vehicle.

Beginning at 34 seconds of the video media player of PO Cordero’s third BWC, PO Leonardo handcuffed § 87(2)(b). Then PO Leonardo grabbed § 87(2)(b) sweatshirt at the base of his neck and swung him around towards a marked police SUV double parked alongside the sidewalk. At 46 seconds, PO Leonardo briefly stopped with § 87(2)(b) in between the patrol vehicle and a black

vehicle. There is about two feet between the two vehicles. § 87(2)(b) stood in front of PO Leonardo with his chest against the patrol vehicle while PO Leonardo spoke with PO Cordero. PO Leonardo's left hand was still holding on to § 87(2)(b) sweatshirt as they walked to the rear of the patrol vehicle. § 87(2)(b) stood in front of PO Leonardo as he patted him down at the rear of the vehicle. § 87(2)(b) body did not touch the patrol vehicle at the rear of the vehicle. PO Leonardo did not push § 87(2)(b) into the patrol vehicle during this time.

§ 87(2)(b) testified that PO Leonardo rear handcuffed § 87(2)(b) and walked him to a police vehicle. PO Leonardo then slammed § 87(2)(b) against the side of the police vehicle so that § 87(2)(b) hand and chest struck the vehicle.

PO Leonardo testified that he handcuffed § 87(2)(b) and then put his hand on § 87(2)(b) head to escort him a few feet to the patrol vehicle. PO Leonardo did not make any other physical contact with § 87(2)(b) at this point. PO Leonardo never pushed § 87(2)(b) into their patrol vehicle.

Force may be used when it is reasonable to ensure the safety of a member of service or third person, or otherwise protect life, or when it reasonable to place a person in custody or to prevent escape from custody Patrol Guide 221-01.

PO Cordero's BWC showed that after PO Leonardo handcuffed § 87(2)(b) he grabbed him by the back of his sweatshirt by the collar, swung him around, and walked him towards their patrol vehicle. At the time the force was alleged to have been used, the BWC showed PO Leonardo was by the patrol vehicle and stood with § 87(2)(b) as he spoke to PO Cordero. PO Leonardo then continued to walk with § 87(2)(b) to the rear of the vehicle. § 87(2)(b) chest was brushed against the side of the patrol vehicle as the two stood in between the double-parked vehicles and they walked through to get to the rear of the patrol vehicle. § 87(2)(b) chest brushed against the patrol vehicle because of the limited space between the two parked vehicles, not as a result of PO Leonardo's actions. PO Leonardo's BWC confirmed he did not push § 87(2)(b) into the side of the patrol vehicle during the entire incident with § 87(2)(b) when force was alleged.

PO Cordero's third BWC video captured the incident when force was alleged in its entirety and showed that no force was used while interacting with § 87(2)(b) § 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Erik Leonardo threatened to arrest

§ 87(2)(b)

At 5:05 minutes of PO Leonardo's third BWC recording, § 87(2)(b) told PO Leonardo that he acted the way he did during the interaction, to stay warm in jail. PO Leonardo responded, "Good for you. Every time I'm out here, I'm going to arrest your ass, so you can always be in jail." At the time PO Leonardo made this statement, § 87(2)(b) was handcuffed.

PO Leonardo testified that he told § 87(2)(b) that he would arrest him every time he was out there in order to scare § 87(2)(b). He did not provide any additional reason.

An arrest without a warrant can be made for an offense when there is reasonable cause to believe offense committed in an officer's presence or for a crime (within presence or not) and reasonable cause exists that arrested person committed the crime Patrol Guide 208-01 (BR 22).

At the time PO Leonardo threatened to arrest § 87(2)(b) he was already under arrest for disorderly conduct. However, PO Leonardo's threat was for a future action in which PO Leonardo did not have any probable cause. PO Leonardo did not articulate a specific action or crime that § 87(2)(b)

§ 87(2)(b) could have been arrested for and this threat was done in a gratuitous manner to scare § 87(2)(b)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
§ 87(2)(b)
■ § 87(2)(b)
■ § 87(2)(b)
- PO Leonardo has been a member of service for 15 years and has been a subject in one CCRB complaint and one allegation, none of which were substantiated. § 87(2)(g)
§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
■ § 87(2)(b)
■ § 87(2)(b)

Squad No.: 6

Investigator: Julia Moran Inv. Julia Moran 11/12/2021
Signature Print Title & Name Date

Squad Leader: Jessica Peña IM Jessica Peña 11/12/2021
Signature Print Title & Name Date